

REMARKS

Claims 1-13 are pending in this application. By this Amendment, claim 1 is amended, claim 13 is added and claims 8-12 are withdrawn. No new matter is added.

I. Priority

Applicant respectfully submits an accurate English translation of JP 2002-309839 to perfect the priority that was claimed on October 22, 2003. Acknowledgement of the accurate English translation of JP 2002-309839 is respectfully requested.

II. Double Patenting Rejection

The Office Action rejects claims 1-7 under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over U.S. Application No. 10/635,562 to Inoue. Applicant respectfully submits a Terminal Disclaimer to overcome the double patenting rejection. Withdrawal of the rejection is thus respectfully requested.

III. The Claims Define Patentable Subject Matter

The Office Action rejects claims 1-7 under 35 U.S.C. §102(e) over U.S. Patent No. 6,518,124 to Ebina et al. This rejection is respectfully traversed.

Claims 1-7 are not anticipated by Ebina. Ebina does not disclose "the thickness of the second insulating layer being less than the thickness of the first insulating layer," as recited in claim 1, and as similarly recited in new claim 13. That is, Ebina does not disclose an insulating layer between the control gate and semiconductor device having a different thickness. Nowhere does Ebina disclose this feature.

In contrast, the insulating layer that is between the control gate and semiconductor device of Ebina has a uniform thickness.

Furthermore, because Ebina is assigned to Seiko Epson, it cannot be asserted under a 35 U.S.C. §103(a) rejection.

Thus, claims 1 and 13 are patentable over Ebina. Further, claims 2-6, which depend from claim 1, are also patentable over Ebina for at least the reasons discussed above, as well as for the additional features recited therein. Withdrawal of the rejection is thus respectfully requested.

IV. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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Attachments:

Terminal Disclaimer
English translation of JP 2002-309839
Amendment Transmittal

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